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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,580	07/31/2001	Derek Barnet Shuman		1838
7590	12/29/2003		EXAMINER	
Derek Barnet Shuman 1442A Walnut St. #240 Berkeley, CA 94709			MCANULTY, TIMOTHY P	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8K

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/918,580	SHUMAN, DEREK BARNET	
	Examiner	Art Unit	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 24 November 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 30-35 and 38-54 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 38-42 is/are allowed.
- 6) Claim(s) 30-35 and 43-54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Drawings***

1. The replacement drawing sheet of figure 7 and figure 8 was received on 24 November 2003. These drawings are accepted.

### ***Claim Numbering***

2. In the amendment filed 24 November 2003, claim 4 was included in the listing of the claims and labeled as per revised 37 CFR 1.121 as "withdrawn." However, claim 4 was cancelled in the amendment filed 11 June 2003. If applicant intended claim 4 to be added in the amendment filed 24 November 2003 a new claim must be added in accordance with 37 CFR 1.126; which requires the original numbering of the claims to be preserved throughout the prosecution, when claims are canceled, the remaining claims must not be renumbered, they must be numbered consecutively beginning with the next number following the highest numbered claim previously presented (whether entered or not).

### ***Claim Objections***

3. - Claims 30, 43, and 49 are objected to because of the following informalities: the recitation of "said" immediately after "second" in line 2 of paragraph (d) of each of claims 30, 43, and 48 should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 30-35 and 43-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 30-35, the recitation in lines 3-4 of paragraph (f) of claim 30 that the gauge cylinder being “a minimum distance from said spindle axis in the absence of said corresponding binding” is unclear. It is unclear as to what distance away from the spindle axis the gauge cylinder is tangent to the shoe supporting surface.

Regarding claims 43-48, the recitation in lines 9-10 of paragraph (g) of claim 30 that the gauge cylinder being “a minimum distance from said spindle axis in the absence of said corresponding binding” is unclear. It is unclear as to what distance away from the spindle axis the gauge cylinder is tangent to the shoe supporting surface.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 30-35 and 43-54 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,784,930 to Ueda (Ueda '930).

Regarding claims 30-35, Ueda '930 discloses in figures 2-5B, 9, and in lines 3-24 of column 3 a pedal comprising a pedal spindle 3 having a spindle axis; bindings 17; a tread cage 5 having shoe supporting surfaces thereon; and a height variability linking (not numbered) positioning and holding the relative height between said bindings to be sufficiently level with or lower than said shoe supporting surfaces and to position and hold said bindings higher than said shoe supporting surfaces; wherein the height of said bindings is defined by a distance from said spindle axis to a cylinder tangent to a surface of said bindings and the height of said shoe supporting surfaces is defined by a

distance from said spindle axis to a cylinder tangent to said shoe supporting surfaces. See also lines 35-50 of column 4.

Regarding claims 43-54, Ueda '930 discloses in figures 2-5B, 9, and in lines 3-24 of column 3 a pedal comprising a pedal spindle 3 having a spindle axis; bindings 17; a tread cage 5 having shoe supporting surfaces thereon; and a height variability linking (not numbered) positioning and holding the relative height between said bindings to be sufficiently level with or lower than said shoe supporting surfaces and to position and hold said bindings higher than said shoe supporting surfaces; wherein the height of said bindings is defined by a distance from said spindle axis to a plane parallel to said spindle axis and tangent to a surface of said bindings and the height of said shoe supporting surfaces is defined by a distance from said spindle axis to a plane parallel to said spindle axis and tangent to said shoe supporting surfaces. See also lines 35-50 of column 4.

***Allowable Subject Matter***

8. Claims 38-42 are allowed.

***Response to Arguments***

9. Applicant's arguments filed 24 November 2003 have been fully considered but they are not persuasive. As presently claimed, both the reference cylinder and the reference plane are not specifically defined. In each instance, there are an infinite number of cylinders or planes parallel to the spindle axis and tangent to a corresponding surface; i.e., a surface on the bindings or a surface on the shoe supporting surfaces. Additionally, as presently claimed in claim 30, the reference cylinder for the bindings is not limited to be orientated the same as the reference cylinder for the shoe supporting surfaces; i.e., both cylinders are not limited to be parallel to one another. As such, the relative height limitations between the bindings and the shoe supporting surfaces are not limited to which is depicted in figure 8 of the present invention. Furthermore,

regarding claims 30-35 and 43-54, the bindings of Ueda '930 are varied such that: (1) the height of the bindings is generally less the height of the shoe supporting surface and (2) the height of the bindings is substantially greater than the height of the shoe supporting surface; even considering either the reference cylinder height limitation or the plane height limitation. A presently claimed, the limitation as to the shoe supporting surface is extremely broad and the guide member 56 meets such a broad limitation, the shoe supporting surface of Ueda '930 is not limited to the tread surface 49.

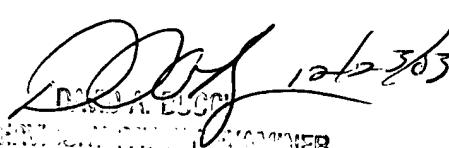
***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

tpm   
19 December 2003

  
TIMOTHY P. MCANULTY  
SPECIALIST IN SHOE DESIGN  
TECHNOLOGY CENTER (3600)